XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(26)

मामला क्रमांक Cr.A.No. 1501/2000 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

SB : HON'BLE SHRI DHIRENDRA MISHRA, J.

APPELLANT 1. Manoj Kumar, Son of Bhagchand Satnami, aged 24 years

2. Rajesh Kumar, son of Nathooram Satnami, aged about 21 years,

Both residents of Boriya, P.S. Berala, Distt. Durg (C.G.)

Vs.

RESPONDENT The State of Chhattisgarh, through P.S. Barela, Distt. Durg (C.G.)

26-7-2007

Shri Rajesh Jain, Advocate for the appellants.

Shri Pradeep Singh, Panel Lawyer for the State.

2. The appellants have preferred this appeal against the judgment dated 11-5-2000 passed in S.T. No. 35/97 whereby the learned Additional Sessions Judge, Bemetara after holding the appellants guilty of offence punishable under Section 307 read with Section 34 of I.P.C., has sentenced each of them to undergo R.I. for 5 years, to pay a fine of Rs. 500/-, and in default of payment of fine, to further undergo R.I. for two months.

3. The case of the prosecution, in brief, is that on 21-1-1997, complainant Baraturam alias Baratiya Satnami was returning from Mohrenga to his village Boriya at about 19.30 hrs. when the appellants near rivulet of Mohrenga assaulted him by Lathi and Sword over his head and other parts of body with intention to cause

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

his death. The complainant tried to ward off the assault by his both the hands as a result of which, his thumb of the right hand was amputated and he became unconscious and fell on the ground. The accused persons left him thinking that he is dead. After regaining consciousness, he returned to the village and narrated the incident to village Sarpanch Devcharan, Aghanu Gadariya and Kotwar Nirauram and thereafter he went to lodge report. On the basis of the report Ex. P-1, Crime No. 156/1997 for offence under Section 307 read with Section 34 of I.P.C. was registered. He was sent for medical examination where P.W. 7 Dr. V.P. Agrawal examined him and gave injury report of Ex. P-24, according to which, the complainant sustained 12 injuries on various parts of the body i.e. head, face, hand, wrist, forearm and chest.

4. Learned counsel for the appellants submits that conviction of the appellants is based on statement of injured witness Baratiya and Dr. V.P. Agrawal (P.W. 7). He further submits that from perusal of the statement of Baratiya, it would be evident that immediately after the incident, he rushed to the village and narrated the incident to the villagers which demonstrates the fact that the injured had not sustained any grievous injury as he was able to run and narrate the incident to the villagers even after the incident. So far as the statement of Dr. V.P. Agrawal (P.W. 7) is concerned, he has categorically stated that none of the injuries sustained by the injured was sufficient to cause death, however cumulative effect of all

GRPRJ — FS/246— 2/2007 — 50,000.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(28)

Cr.A.No. 1561/2000

मामला क्रमांक ..... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

injuries could be dangerous to life. This fact has not been mentioned by this witness in his report of Ex. P-24. Thus, from the evidence of these two witnesses, offence does not fall under Section 307 of I.P.C. He further submits that the injured did not suffer any bony injury on his vital organ and the offence does not travel beyond Section 326 of I.P.C.

5. On the other hand, learned counsel for the State supports the impugned judgment.

6. I have heard learned counsel for the parties. I have perused the record.

7. P.W. 3 Baratiya, the injured complainant has stated that while he was returning from village Mohrenga after attending his patient, he found both the accused persons standing near rivulet. They stopped him and Manoj assaulted with a lathi on his head, thereafter Rajesh took out a sword and started assaulting. He sustained injuries of sword over his head and eyes. He ward off the assault by using his hand as a result of which, thumb of the right hand was amputated. He also sustained fracture injury over his wrist and thereafter, he became unconscious and fell on the ground. After regaining consciousness, he rushed to the village and narrated the incident to the villagers. This witness has been cross-examined at length on behalf of the defence, however, the defence has not been able to impeach the credibility of this witness even after cross-examining him at length and he has struck to his version given in the

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(37) 4

C.A. No. 1501/2000

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	examination-in-chief. Statement of this witness is duly corroborated by promptly lodged F.I.R. of Ex. P-1 as also from the injury report of Ex. P-24 as P.W 7 Dr. V.P. Agrawal who has examined the injured has found corresponding injuries over the person of this injured witness. Therefore, the finding of the trial Court that both the appellants were involved in assaulting the complainant is proper. So far as the second argument advanced by the learned counsel appearing for the appellants that the injuries present over the vital organ i.e. head are muscle deep and as such, were not grievous and there is no evidence that the injuries sustained by him over his head were sufficient to cause his death in ordinary course is concerned, I am unable to accept the argument advanced by the learned counsel in this regard because from the evidence of P.W. 3 Baratia, it is manifestly clear that both the appellants were waiting for arrival of the complainant near secluded place armed with sword and lathi and as soon as he reached the spot, they started assaulting him. The injured could somehow escaped lethal blow by using his hand, as a result of which he sustained grievous injuries over his wrist and right thumb, therefore, from the weapon of offence used by the present appellants, the manner in which the appellants assaulted the complainant and the injuries sustained by the complainant over his head, the intention of the appellants of causing death can be inferred, Therefore, the court below has not committed any illegality by reaching to the conclusion that the appellants committed offence	

XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(30)

मामला क्रमांक Cr.A.No. 1501/2000 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	under Section 307 of I.P.C. The other argument that the accused persons are young boys of 24 years and, therefore, the Court below ought to have considered their case sympathetically in imposing jail sentence, is concerned, looking to the manner in which the offence has been committed by the appellants, I am of the opinion that proper sentence has been imposed by the Court below. 8. The appeal being devoid of substance is liable to be dismissed and it is accordingly dismissed. 9. It is stated that appellant No. 1 Manoj is on bail. His bail bond is cancelled. He is directed to surrender before the trial Court forthwith for undergoing the remaining sentence. **Sd/-** **Dhirendra Mishra** **Judge**	